

**CITATION:** Griffon Integrated Security Technologies et al. v. Valley Associates Inc. et al.,  
2023 ONSC 2200

**COURT FILE NO.:** CV-19-79738

**DATE:** 2023/04/14

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Griffon Integrated Security Technologies Inc., and Randall Sheppard,

Plaintiffs

**- AND -**

Valley Associates Inc. o/a Valley Associates Integrated Systems Inc., Valley  
Associates Global Security Corporation and R. Michael Martin,

Defendants

**BEFORE:** Regional Senior Justice Calum MacLeod

**COUNSEL:** Andrew Paterson, for the Plaintiffs

No one appearing for the Defendants

**HEARD:** December 8, 2022 and April 14, 2023

**DECISION AND REASONS**

[1] This matter originally came before the court on December 8, 2022, as a motion for judgment. For several reasons, I adjourned to receive additional submissions.

[2] For the reasons that follow, I am satisfied that judgment is appropriate against the defendants including damages for breach of contract (pay or fees in lieu of notice), pre-judgment interest, punitive damages and substantial indemnity costs. I have signed judgment accordingly and, as there is now a notice of intended proposal by one of the defendants, I have lifted the stay under the *Bankruptcy and Insolvency Act* for the purpose of granting judgment.

**Background and Litigation History**

[3] The plaintiff Sheppard was employed as the Vice President and General Manager of Valley Associates Inc. and subsequently Valley Associates Global Security Corporation for over 12 years. Originally this was pursuant to a written contract between the plaintiff's personal services corporation (Griffon) and Valley Associates. At all material times, the defendant Martin was the owner, director, CEO and directing mind of the defendant corporations. At the end of the initial two-year term, the contract continued as an indefinite term employment contract with payment for the plaintiff's services continuing through Griffon.

[4] It is the plaintiff's evidence that the defendants were frequently late in paying him his full entitlements. At one point he was owed more than \$225,000.00.

[5] In August of 2018, the plaintiff was diagnosed with colon cancer and subsequently had to undergo surgical and chemical treatment. He continued to discharge his responsibilities to the extent that he was able to do so. On January 15, 2019, the defendants terminated his employment without cause and without notice while he was between chemotherapy treatments.

[6] This action was commenced on March 26, 2019. It was vigorously defended using what can only be described as a "scorched earth" strategy. The defendants accused the plaintiff of financial irregularities and argued after discovered cause. They launched a counterclaim for *inter alia* breach of contract, fraud and defamation. It is apparent from the discoveries and from the subsequent conduct of the defendants in the litigation that there was never any substance to the counterclaim and no basis to any defence. There are no documented performance issues, no warnings and no termination event.

[7] Throughout the litigation, the defendants defended as a group and pursued the counterclaim as a group. The prayer for relief in the counterclaim did not distinguish between the defendants or the damages they sought. They were represented by the same counsel.

[8] Also, throughout the litigation, the defendants failed to honour production and discovery obligations. At some point, their lawyer moved to get off the record and neither the corporate defendants nor Mr. Martin complied with the obligations under Rule 15.04 (5) – (9).

[9] At a motion before Justice Williams on September 5, 2022, the plaintiffs sought an order striking the defendants' pleadings. At that time Mr. Martin and a business partner, Mr. Mills, appeared. In the words of the endorsement, "Mr. Martin and Mr. Mills advised that they did not intend to participate in the litigation going forward and confirmed that they consent to the striking of the defendants' statement of defence and the dismissal of the defendants' counterclaim." The pleading was struck out, the counterclaim was dismissed and costs of \$5,000.00 were awarded against the defendants. Subsequently, the defendants have been noted in default.

[10] Pursuant to Rule 19.02 (1) (a), a defendant who has been noted in default is deemed to admit all of the allegations in the Statement of Claim. In addition to the admitted allegations, I have before me the affidavit of Mr. Sheppard and the various documents attached as exhibits.

[11] Despite the defendants agreeing to the order striking the pleadings and despite the admitted and deposed facts that are before the court, a court in these circumstances will not just grant the plaintiff whatever the plaintiff demands. It is still necessary to determine if the requested relief can be justified and whether the law permits the remedies the plaintiff is seeking.

### **Analysis, Findings and Decision**

[12] Dealing firstly with the claim for wrongful dismissal, I have no difficulty in concluding that despite the use of a personal services corporation, the contract between the plaintiffs and the defendants was in pith and substance an employment contract. Furthermore, once the initial two-year term of the written contract expired, it is clear that the contract to provide the services of Mr.

Sheppard was a continuing contract of indeterminate duration. The law will readily imply that it was a term of such contract that in the absence of just cause, the defendants could only terminate the contract on reasonable notice.<sup>1</sup>

[13] There was no cause for dismissal. The plaintiffs are entitled to damages equivalent to the fees that would have been paid during the notice period less any amounts actually paid or earned in mitigation.

[14] The plaintiffs submit that, based on Sheppard's age, length of service, character of employment and availability of similar employment with respect to his experience, training and qualification, the appropriate notice period would be 20 months. In support of this submission, the plaintiffs provided three decisions. Of particular assistance are two decisions of the Court of Appeal reviewing the correct analysis and application of the "Bardal Factors".<sup>2</sup>

[15] In this case Mr. Sheppard was 65 years of age at the time of his termination. He was undergoing cancer treatment. He was, to the knowledge of the defendants, in a difficult financial situation because the defendant corporation had been unable or unwilling to pay him accrued bonuses and commissions. His prospects of finding similar or alternative employment are limited indeed. There is no evidence that he was planning to imminently retire. The employer compounded the harm to the plaintiff by cutting off his benefits, accusing him of financial irregularities and fraud. I accept that in these circumstances, 20 months notice would have been reasonable for the second most senior executive in the corporation.

[16] The plaintiff has calculated his entitlement based on the average monthly amount paid under the contract, (\$14,546.62 x 20) and I find that to be reasonable. The total damages for pay in lieu of notice (as specifically requested in the amended statement of claim) would be \$290,932.00.

[17] The plaintiff did not seek to prove aggravated or moral damages independent of the pay in lieu of notice. The brutality of the dismissal, however, can be considered in determining the notice period because the completely unfounded allegations of dishonesty would have rendered it far more difficult for the plaintiff to find alternative employment.<sup>3</sup>

[18] The plaintiff has calculated pre-judgment interest on the notice damages. I have rounded up the calculation to take into account the time since the motion was argued and I fix the PJI at \$12,000.00.

[19] Based on the evidence before the court and the history of the litigation which included a spurious defence and counterclaim, I accept the plaintiff's submissions that costs should be awarded on a substantial indemnity scale. I have reviewed the bill of costs. I fix the costs at

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<sup>1</sup> See *Machtinger v. HOJ Industries Ltd.*, [1992] 1 SCR 986 and cases following

<sup>2</sup> *Singer v. Nordstrong Equipment Limited*, 2018 ONCA 364 (CanLII); *Ruston v. Keddco MFG. (2011) Ltd.*, 2019 ONCA 125 (CanLII)

<sup>3</sup> See *Ruston v. Keddco*, *supra* @ paras. 7 - 9

\$30,000.00 inclusive of fees and HST. Added to this will be the disbursements of \$4,570.66 for a total costs award of \$34,570.66.

[20] It remains to deal with the claim for punitive damages. Punitive damages can be awarded when the behaviour of the defendant is such that it shocks the conscience of the court and the amounts already awarded for compensatory damages and costs will be insufficient to denounce that conduct. Unlike other heads of damage, punitive damages are essentially a form of fine imposed on a defendant. Punitive damages are an extraordinary remedy and will not be routinely awarded.

[21] I must consider whether, in addition to allowing damages at the high end of the notice range and awarding substantial indemnity costs, punitive damages are justified. In the *Ruston v. Keddco* decision on facts quite similar to these, the Court of Appeal upheld a punitive damages award of \$100,000 in addition to ordinary damages and substantial indemnity costs. The behaviour of the defendants in this case is deserving of similar condemnation. I award punitive damages and I fix those damages at \$75,000.

[22] Ordinarily there would be an issue as to whether or not the defendant Martin should have personal liability under a contract between the plaintiff and a corporate defendant. Indeed, this issue was pleaded in the statement of defence that was struck out. That defence pleaded that neither Mr. Martin nor Mr. Russell were parties to the personal services contract that was originally signed on behalf of their corporations.

[23] The plaintiff concedes that it would technically be the plaintiff corporation that is entitled to the damages which the corporation could in turn allocate to the individual plaintiff, its sole owner and shareholder. It is of course open to the individual plaintiff to cause the corporation to assign the judgment to him so ultimately, he controls the manner in which the judgment should be paid.

[24] In the case of the defendant, however, the plaintiff seeks to have Mr. Martin made jointly and severally liable for the following reasons:

- a. The statement of defence has been struck and that includes the pleading mentioned above.
- b. At all material times, Mr. Martin was the sole shareholder, director and most senior officer. It was he who wrote the termination letter and who directed the conduct of the litigation.
- c. At all times the defendants defended as a group and were represented by the same counsel. The defendants did not differentiate between themselves when they advanced the counterclaim.
- d. On the motion to strike, Mr. Martin was present and he advised the court he consented to the order striking the defence and the counterclaim. He was fully aware that the plaintiff was pursuing him in his personal capacity.

- e. There is confusion concerning the identity of the corporate defendants. In the (now struck) defence, the defendants pleaded that “Valley Associates Inc. and Valley Associates Global Security Corporation (collectively "VA") are a privately held defence contractor”. Similarly in the affidavit evidence, it is apparent the defendants changed their letterhead and the apparent name of the corporation from time to time.
- f. There are pleadings in the (now admitted) statement of claim and facts set out in the affidavit evidence which constitute independent actionable wrongdoing sufficient to pierce the corporate veil.

[25] In an important decision of the Court of Appeal in 2020, the court affirmed that the corporate veil may appropriately be pierced if an individual directs a wrongful act to be done and effectively uses a corporation simply as an *alter ego*.<sup>4</sup> Taking the evidence as a whole and bearing in mind that this is now an undefended action in which the defendant Martin knew he was being sued personally and knew his defence was to be struck, I agree that the defendants should be jointly and severally liable for the award of damages.

[26] Even had I concluded that Mr. Martin should not be liable for the pay in lieu of notice, it would still have been open to me to award punitive damages against him in his personal capacity. That is appropriate here so that even if I am in error in respect of the \$290,932.00, I would still order the punitive damages to be paid jointly or severally. Similarly, it is open to a court to award costs against some or all of the defendants (or for that matter against a non-party in appropriate circumstances). There is no doubt that Mr. Martin should be liable for the costs.

### **Lifting of the Stay**

[27] There has been a further development since the motion was first argued. On March 23, 2023, the plaintiffs received a Notice of Stay of Proceedings issued by Doyle Salewski Inc. This was issued pursuant to subsection 69 (1) of the *Bankruptcy and Insolvency Act* because the defendant Valley Associates Global Security Corporation has filed a Notice of Intention to Make a Proposal.

[28] To the extent that such a stay would apply to a default proceeding such as this already underway, it would not stay the action against the individual defendant or against Valley Associates Inc. if that is a separate corporate entity. In any event, it is open to me to lift the stay for the limited purpose of permitting the plaintiff to complete the motion and to obtain judgment.

[29] There will be a limited lifting of the stay for that purpose and the judgment as signed may issue.

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<sup>4</sup> 6071376 *Canada Inc. v. 3966305 Canada Inc.*, 2020 ONCA 428 (CanLII)

### **Summary and Conclusion**

[30] In conclusion the plaintiffs shall have judgment against the defendants for the following amounts:

- a. Damages for breach of contract in the amount of \$290,932.40
- b. Prejudgment interest on the above amount fixed at \$12,000.00
- c. Substantial indemnity costs fixed at \$30,000.00 inclusive of HST and disbursements in the amount of \$4,570.66.
- d. Punitive damages fixed at \$75,000.00
- e. Post judgment interest on these amounts pursuant to s. 129 of the *Courts of Justice Act*.

[31] The stay of proceedings against Valley Associates Global Security Corporation is lifted for the limited purpose of permitting the plaintiffs to complete this matter and to obtain judgment. It is open to the plaintiffs to seek further relief pursuant to the *Bankruptcy and Insolvency Act* as may be appropriate.

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Justice C. MacLeod

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**DECISION AND REASONS**

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Regional Senior Justice C. MacLeod

**Released:** April 14, 2023